

Taheri v. Evergreen Aviation Ground Logistics Enter., Inc., No. 06-35152
WALLACE, Circuit Judge, dissenting:

FILED

AUG 31 2007

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

I would affirm the district court's summary judgment in favor of Evergreen.

Taheri did not create a genuine issue of material fact disputing Kegley's non-discriminatory reason for the termination.

Taheri may rely on circumstantial evidence to show that Evergreen's proffered reason for his discharge was pretextual, but that circumstantial evidence must be "'specific' and 'substantial.'" *Winarto v. Toshiba Am. Elecs. Components, Inc.*, 274 F.3d 1276, 1284 (9th Cir. 2001). Taheri's evidence is neither.

Employees' general observations that many people slept on the job do not directly dispute Kegley's specific statements that in his short time at Evergreen before becoming General Manager he did not witness any employees sleeping on the job, nor do the employees' accounts contradict the evidence that Kegley disciplined all those he discovered sleeping on the job once he became General Manager. Even viewing the employees' testimony in the light most favorable to Taheri, it does not create a genuine issue of material fact about Kegley's personal knowledge or show that Kegley himself knew of but failed to discipline other, similarly-situated employees who were sleeping on the job.

Kegley's own testimony and the evidence that Taheri was repeatedly warned and disciplined for sleeping on the job is undisputed and I would affirm the district court's summary judgment.